

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NORMA MOLINA, an)	CV 18-03181-RSWL-FFM
individual,)	
)	
Plaintiff,)	
)	Order re: Motion to
v.)	Remand Case to Los
)	Angeles Superior Court
)	[17]
)	
TARGET CORPORATION, a)	
Minnesota corporation; and)	
DOES, 1 through 20,)	
inclusive,)	
)	
Defendants.)	
)	
)	
)	

Plaintiff Norma Molina ("Plaintiff") brings this Action against Defendant Target Corporation ("Defendant") for alleged violations of the California Fair Employment and Housing Act ("FEHA"). Currently before the Court is Plaintiff's Motion for Order Remanding Action to State Court ("Motion") [17].

1 Having reviewed all papers submitted pertaining to this
2 Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the
3 Court **DENIES** Plaintiff's Motion.

4 **I. BACKGROUND**

5 **A. Factual Background**

6 Plaintiff resides in California. Compl. ¶ 2, ECF
7 No. 1-2. Defendant, a Minnesota corporation, owns and
8 operates a retail business with various offices and
9 stores located throughout California. Id. ¶¶ 3-4.

10 Defendant hired Plaintiff to work as a maintenance
11 worker in May 2013. Id. ¶ 16. On March 22, 2015,
12 Plaintiff suffered a work-related injury while mopping.
13 Id. ¶ 18. While bending over to press a level, she
14 felt a sharp pain in her lower back. Id. Plaintiff
15 immediately notified her supervisor of this disability
16 and was sent to a nurse who suggested that Plaintiff
17 should go to an emergency room. Id. ¶ 19. Plaintiff
18 visited the company doctor and returned to work with
19 restrictions not to lift more than twenty pounds. Id.
20 ¶ 20. For the next year, Plaintiff complained to her
21 supervisors that she was still in pain, but requests to
22 see another doctor were ignored. Id.

23 Thereafter, a new doctor informed Plaintiff that
24 she had a misaligned disk and further restricted her
25 working duties. Id. ¶ 21. Instead of accommodating
26 Plaintiff's restrictions, Defendant assigned her to
27 another role which required Plaintiff to violate those
28 restrictions. Id. ¶ 22. On October 10, 2016,

1 Plaintiff checked her work schedule and saw that she
2 was not scheduled to work that week and, in fact, her
3 hours had been drastically reduced. Id. ¶ 23. On the
4 day before her scheduled shift that week, Plaintiff
5 called off work due to back pain and was shortly
6 notified that "she had been terminated because she had
7 called off work too many times." Id. ¶ 24. Defendant
8 terminated Plaintiff on November 15, 2016. Id.

9 **B. Procedural Background**

10 On March 7, 2018, Plaintiff filed her Complaint [1-
11 2] against Defendant in Los Angeles Superior Court.
12 Plaintiff claims that Defendant is liable for
13 discrimination, retaliation, failure to prevent
14 discrimination and retaliation, failure to provide
15 reasonable accommodations, and failure to engage in a
16 good faith interactive process in violation of FEHA.
17 She also claims that Defendant wrongfully terminated
18 her in violation of public policy, she is entitled to
19 declaratory judgment, and Defendant failed to permit
20 inspection of personnel and payroll records in
21 violation of California Labor Code section 1198.5.

22 Defendant removed the Action [1] to this Court on
23 April 16, 2018 on the basis of diversity jurisdiction.
24 On June 7, 2018, Plaintiff filed the instant Motion
25 [17], arguing that the amount in controversy does not
26 satisfy the jurisdictional minimum. Defendant timely
27 opposed [22], and Plaintiff timely replied [24].

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II. DISCUSSION

A. Legal Standard

Civil actions may be removed from state court if the federal court has original jurisdiction. See Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 33 (2002) ("Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant to that provision, . . . original subject-matter jurisdiction [must] lie[] in the federal courts."). Diversity jurisdiction exists in all civil actions between citizens of different states where the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. There must be complete diversity of citizenship, meaning "each of the plaintiffs must be a citizen of a different state than each of the defendants." Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001) (citing Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996)). Federal question jurisdiction exists in "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

"The burden of establishing jurisdiction falls on the party invoking the removal statute, which is strictly construed against removal." Sullivan v. First Affiliated Sec., Inc., 813 F.2d 1368, 1371 (9th Cir. 1987) (internal citations omitted). Courts resolve all ambiguities "in favor of remand to state court." Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th

1 Cir. 2009) (citing Gaus v. Miles, Inc., 980 F.2d 564,
2 566 (9th Cir. 1992)). A removed case must be remanded
3 "[i]f at any time before final judgment it appears that
4 the district court lacks subject matter jurisdiction."
5 28 U.S.C. § 1447(c).

6 **B. Analysis**

7 1. Judicial Notice

8 Defendant requests that the Court take judicial
9 notice of ten documents. See Req. for Judicial Notice
10 ("RJN") 2:1-4, ECF No. 23. Exhibit One is an
11 administrative complaint of employment discrimination
12 before the California Department of Fair Employment and
13 Housing against Defendant. See id., Ex. 1, ECF No. 23-
14 1. Exhibits Two through Ten are court documents,
15 including complaints, verdicts, and declarations from
16 both state and federal courts. See id., Exs. 2-10,
17 ECF. Nos. 23:1-2.

18 Courts may take judicial notice of a record from an
19 administrative body. See, e.g., Kottle v. Northwest
20 Kidney Ctrs., 146 F.3d 1056, 1064 n.7 (9th Cir. 1998)
21 (taking judicial notice of public records from the
22 Department of Health); Barron v. Reich, 13 F.3d 1370,
23 1377 (9th Cir. 1994) (taking judicial notice of public
24 records from the Department of Labor). Moreover,
25 courts "may take judicial notice of undisputed matters
26 of public record, including documents on file in
27 federal or state courts." Harris v. Cty. of Orange,
28 682 F.3d 1126, 1132 (9th Cir. 2012) (internal citation

omitted). Accordingly, Defendant's Request for Judicial Notice is **GRANTED** in its entirety.

2. Subject Matter Jurisdiction

Plaintiff contends that this Court lacks subject matter jurisdiction over this Action. Specifically, the parties dispute whether Plaintiff's claims exceed \$75,000 to qualify for diversity jurisdiction.

Where, as here, a complaint does not demand a specific sum, "the notice of removal may assert the amount in controversy." 28 U.S.C. § 1446(c)(2)(A); see Kroske v. US Bank Corp., 432 F.3d 976, 980 (9th Cir. 2005) (stating that where "the complaint does not demand a dollar amount, the removing defendant bears the burden of proving by a preponderance of evidence that the amount in controversy exceeds \$[75],000" (quoting Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 376 (9th Cir. 1997))). The "notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required . . . only when the plaintiff contests, or the court questions, the defendant's allegation." Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 554 (2014). Where the plaintiff contests the amount alleged in the notice of removal, "both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied." Id. at 551 (citing 28

1 U.S.C. § 1446(c)(2)(B)).

2 a. *Economic Damages*

3 Plaintiff seeks compensatory damages for past and
4 future lost wages, bonuses, commissions, retirement
5 benefits, loss or diminution of earning capacity, and
6 other employment benefits. Compl. ¶¶ 32-33. With
7 respect to this Motion, both parties focus on wages
8 exclusively.

9 Since Plaintiff's hourly rate upon termination of
10 employment was \$10.50, see Suppl. Decl. of Therese-
11 Marie Vu ("Vu Decl.") ¶ 2 (reviewing payroll records),
12 ECF No. 22-1, her lost wages between termination and
13 removal of this Action are approximately \$31,080
14 (\$10.50 per hour for forty hours per week for seventy-
15 four weeks).¹ Because Plaintiff "claims at the time of
16 removal that her termination caused her to lose future
17 wages, . . . then there is no question that future
18 wages are 'at stake' in the litigation, whatever the
19 likelihood that she will actually recover them."
20 Chavez v. JPMorgan Chase & Co., 888 F.3d 413, 417 (9th
21 Cir. 2018). As such, the Court must also consider

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23 ¹ According to Defendant, the amount in controversy
24 additionally should include damages after Defendant reduced
25 Plaintiff's work schedule by 40% following her injury. See
26 Def.'s Opp'n to Pl.'s Mot. to Remand 7:17-21, 8:3-6, ECF No. 22.
27 In the record before the Court, however, the only alleged
28 reduction in hours was on October 10, 2016 (well after
Plaintiff's injury and shortly before she was fired) when
Defendant scheduled Plaintiff to work only three hours that week.
Compl. ¶ 23; see RJN, Ex. 1 at 9-10 (apparently misstating the
date as October 10, 2015 but clarifying that Plaintiff's "last
pay check was ready for pick up" the following week).

1 damages from the date of removal until trial in April
2 2019.²

3 Plaintiff argues that she likely will find gainful
4 employment before trial, obviating the need to
5 speculate future lost wages. Such mitigation, however,
6 is inapplicable to the amount-in-controversy
7 calculation. See Geographic Expeditions, Inc. v.
8 Estate of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1108
9 (9th Cir. 2010) ("[I]f a district court had to evaluate
10 every possible defense that could reduce recovery below
11 the jurisdictional amount the district court would
12 essentially have to decide the merits of the case
13 before it could determine if it had subject matter
14 jurisdiction."); see, e.g., Garcia v. ACE Cash Express,
15 Inc., No. SACV 14-0285-DOC (RNBx), 2014 WL 2468344, at
16 *3 (C.D. Cal. May 30, 2014) (quoting St. Paul Mercury
17 Indem. Co. v. Red Cab Co., 303 U.S. 283, 289-90 (1938))
18 (rejecting, for the amount-in-controversy calculation,
19 new jobs procured following termination). Thus, from
20 removal until trial, Plaintiff could have lost wages of
21 about \$21,000 (\$10.50 per hour for forty hours per week
22 for fifty weeks). Adding the foregoing damages
23 together, the Court finds that Plaintiff's lost wages
24 could amount to \$52,080.

25 b. *General Damages*

26 Plaintiff seeks "general damages for emotional and
27

28 ² The parties proposed setting trial for April 2019. Joint
Rule 26(f) Report 8:5-6, ECF No. 16.

1 mental distress." Compl. ¶ 34. Further, Plaintiff
2 alleges that she "has suffered and will continue to
3 suffer general and special damages, including severe
4 and profound pain and emotional distress, anxiety,
5 depression, headaches, tension, . . . medical expenses,
6 [and] expenses for psychological counseling and
7 treatment." Id. ¶ 32. Potential emotional distress
8 damages must be considered when estimating the amount
9 in controversy. See Kroske, 432 F.3d at 980 (finding
10 that the district court appropriately considered
11 emotional distress damages in the amount-in-controversy
12 calculation for removal purposes). Courts have allowed
13 defendants to introduce evidence of jury verdicts to
14 show emotional distress damages. See Cain v. Hartford
15 Life & Accident Ins., 890 F. Supp. 2d 1246, 1250 (C.D.
16 Cal. 2012) ("To establish the amount of emotional
17 distress in controversy, a defendant may introduce
18 evidence of jury verdicts in other cases." (citation
19 omitted)); see, e.g., Rivera v. Costco Wholesale Corp.,
20 No. C 08-02202 CW, 2008 U.S. Dist. LEXIS 58610, at *9-
21 11 (N.D. Cal. July 11, 2008) (using jury verdicts to
22 establish that emotional distress damages in employment
23 discrimination cases may be substantial).

24 Defendant submitted complaints and jury verdicts
25 from analogous cases to show that the alleged emotional
26 distress damages are substantial. See RJN, Exs. 2-7.
27 Specifically, Defendant relied upon: Wiley v. Trendwest
28 Resorts, Inc.; Hernandez v. Regents of the University

1 of California; and Johnson v. BCI Coca-Cola of Los
2 Angeles. Each case is analogous to this Action,
3 referencing FEHA violations, wrongful termination, and
4 discrimination on the basis of disability leading to
5 emotional distress damages of \$75,000, \$90,000, and
6 \$135,000, respectively. In Hernandez, for instance,
7 the plaintiff's disabilities, similar to Plaintiff's
8 here, impacted her working abilities and restricted her
9 from participating in everyday activities. See id.,
10 Ex. 4. Her employer would not accommodate her
11 disabilities and eventually terminated her, leading to
12 \$90,000 in emotional distress damages. See id., Exs.
13 4-5. These cases are fairly similar, but even taking
14 the lowest recovery from Defendant's cited cases,
15 Plaintiff potentially could recover \$75,000 for
16 emotional distress.

17 c. *Punitive Damages*

18 Plaintiff also seeks punitive damages, which are
19 part of the amount in controversy. Gibson v. Chrysler
20 Corp., 261 F.3d 927, 945 (9th Cir. 2001). With respect
21 to the judicially-noticed verdict from Wiley, the jury
22 awarded \$250,000 in punitive damages to one plaintiff
23 who was subjected to gender discrimination. RJN, Ex.
24 3. Even assuming "the facts of the instant action are
25 far less egregious, [D]efendant has met its burden of
26 showing by a preponderance of the evidence that the
27 amount in controversy should include a punitive damages
28 award." Simmons v. PCR Tech., 209 F. Supp. 2d 1029,

1 1033 (N.D. Cal. 2002). Applying a conservative 1:1
2 ratio of Plaintiff's compensatory damages with punitive
3 damages, Plaintiff has placed \$127,080 in punitive
4 damages in controversy.

5 d. *Attorneys' Fees*

6 "[W]here an underlying statute authorizes an award
7 of attorneys' fees, either with mandatory or
8 discretionary language, such fees may be included in
9 the amount in controversy." Galt G/S v. JSS
10 Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998). In
11 this Action, FEHA gives the Court discretion to "award
12 to the prevailing party . . . reasonable attorney's
13 fees and costs." Cal. Gov't Code § 12965(b). Further,
14 in Chavez, 888 F.3d at 417, the Ninth Circuit seems to
15 suggest that potential damages, such as post-removal
16 attorneys' fees, should be used in the total
17 calculation because their futurity does not preclude
18 them from the total calculation. See Bernstein v. BMW
19 of N. Am., No. 18-cv-01801-JSC, 2018 U.S. Dist. LEXIS
20 81993, at *5 n.3 (N.D. Cal. May 15, 2018); Lucas v.
21 Michael Kors (USA) Inc., No. CV 18-1608-MWF (MRWx),
22 2018 U.S. Dist. LEXIS 78510, at *32 (C.D. Cal. May 9,
23 2018) (citation omitted).

24 Here, Defendant provided the complaint in Bolanos
25 v. Priority Business Services, which is subject to
26 judicial notice. Bolanos is factually similar to this
27 case with almost the same alleged causes of action
28

1 (i.e., discrimination, retaliation, failure to prevent
2 discrimination and retaliation, failure to engage in a
3 good faith interactive process, declaratory judgment,
4 and wrongful termination). See RJN, Ex. 8. Moreover,
5 the plaintiff in Bolanos was represented by the same
6 law firm and partner as in this Action. The Bolanos
7 court affirmed a fee award of \$231,470.50, and the
8 plaintiff's firm worked 383.9 hours on that case. See
9 Bolanos v. Priority Bus. Servs., No. B280139, 2018 WL
10 1224655, at *6, *14 (Cal. Ct. App. Mar. 9, 2018). The
11 partner and associate for Plaintiff in this Action have
12 recently filed declarations in other courts stating
13 that their standard hourly rates are \$750 and \$450,
14 respectively. See RJN, Exs. 9-10. Even from the
15 associate's rate at \$450 per hour for 200 hours
16 (compared to the 383.9 hours in Bolanos), for example,
17 Plaintiff would have \$90,000 in attorneys' fees.

18 *e. Offers to Settle or Stipulate*

19 Before filing this Motion, Plaintiff offered to
20 settle the matter for \$50,000. On the other hand,
21 Defendant sought to stipulate that Plaintiff would not
22 seek more than \$75,000 in this Action. Although
23 settlement demands and refusals to stipulate can be
24 relevant to the amount in controversy, see Cohn v.
25 Petsmart, Inc., 281 F.3d 837, 840 (9th Cir. 2002);
26 Yaralian v. Home Depot U.S.A., No. CV 15-06930 DDP
27 (GJSx), 2015 U.S. Dist. LEXIS 165127, at *5 (C.D. Cal.
28

1 Dec. 9, 2015), the Court finds that Plaintiff's
2 settlement demand of \$50,000 is counterbalanced by her
3 refusal not to stipulate to recover less than \$75,000.

4 In sum, Plaintiff could recover at least \$52,080
5 for lost wages, \$75,000 for emotional distress,
6 \$127,080 in punitive damages, and \$90,000 in attorneys'
7 fees.³ As such, Defendant has met its burden in proving
8 by a preponderance of the evidence that this Action has
9 more than \$75,000 at stake. Given that the Court has
10 diversity jurisdiction, remand would be improper.

11 **III. CONCLUSION**

12 Based on the foregoing, the Court **DENIES**
13 Plaintiff's Motion.

14
15 **IT IS SO ORDERED.**

16 DATED: August 14, 2018

s/ RONALD S.W.LEW

17 **HONORABLE RONALD S.W. LEW**
18 Senior U.S. District Judge
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26 ³ These amounts are conservative and do not include recovery
27 for other economic damages (e.g., employment benefits) or pain
28 and suffering, which would likely raise the amount in
controversy.